



CITY OF LODI

COUNCIL COMMUNICATION

AGENDA TITLE: Renewal of Lease with Lodi Memorial Hospital for Operation of a Senior Day Care Center at Hutchins Street Square

MEETING DATE: January 5, 1994

PREPARED BY: Bob McNatt, City Attorney

RECOMMENDED ACTION: Council consideration and possible approval of the extension of the lease between the City and the Lodi Memorial Hospital for operation of the Senior Day Care Center at Hutchins Street Square.

BACKGROUND INFORMATION: In 1989, the City agreed to lease to the Lodi Memorial Hospital space in the William Holz Senior Center at Hutchins Street Square for operation of a day care center. This lease was for the nominal sum of One Dollar per year and was intended to facilitate operation of a senior citizen day care service. The lease became effective upon completion of construction in early 1990.

Under that lease, it was specified that it could be "renewed by mutual consent for three year increments..." The original term expired in March of 1993, but for numerous reasons, this matter has not come back until now.

Under the renewal agreement, the terms would remain the same, but some clarifying language has been added so determination can be made of whether the operation is producing a profit. This is relevant because it has been agreed that any profit realized from the operation would be reinvested in the Hutchins Street Square facility, although both parties intend the operation to just break even in order to keep the cost at its most affordable level.

FUNDING: Unknown.

Respectfully submitted,

Bob McNatt
City Attorney

BM:pn

cc: Charlene Lange
Lodi Memorial Hospital Board

LODIMEM/TXTA.01V

APPROVED _____

THOMAS A. PETERSON
City Manager



recycled paper

AGREEMENT

THIS AGREEMENT, entered into by and between the CITY OF LODI, a
municipal corporation ("City"), and LODI MEMORIAL HOSPITAL ("Hospital").

W I T N E S S E T H:

WHEREAS, Lodi Memorial Hospital and the City of Lodi have
previously entered into a three (3) year Agreement whereby Hospital leased
from City a portion of the Senior Citizens' Complex at Hutchins Street
Square. A copy of said Agreement is attached hereto marked Exhibit "A" and
by this reference made a part hereof; and

WHEREAS, the purpose of said Lease was for the establishment of a
Senior Day Care Center at the Hutchins Street Square facility; and

WHEREAS, the parties hereto are desirous of continuing their
relationship for an additional three (3) years;

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as
follows:

1. The purpose of this Agreement is to provide a senior day care
facility on a year-round basis at the Hutchins Street Square facility.
2. The City of Lodi agrees to and hereby leases to Lodi Memorial
Hospital, the facilities and space described as:

The southern portion of the remodeled Senior
Citizens' Complex at Hutchins Street Square, as
more particularly shown on the floor plan
attached hereto and made a part of this Agreement
by reference.

For the sum of ONE DOLLAR (\$1.00) per year, payable in advance on the anniversary date of this Agreement.

3. The term of this Agreement shall be for a period of three (3) years commencing March 14, 1993 and expiring on March 13, 1996.

4. City shall provide all customary and usual maintenance of buildings and grounds. Lodi Memorial Hospital shall be responsible for all janitorial and cleaning services for the interior of the space described. Hospital shall install or cause to be installed in its own name, separate meters for gas and electric utilities for the space demised hereunder, and shall be responsible for payment of all such utilities, plus a pro rata share of water and sewer charges at Hutchins Street Square.

5. Lodi Memorial Hospital shall provide all necessary and customary equipment, furniture, and staff to provide care for a maximum of thirty (30) persons. In addition, Lodi Memorial Hospital shall be responsible for publicity and marketing of the program, expending reasonable and good faith efforts to make the public aware of this program. All kitchen appliances, if any, shall be provided, owned, and maintained by Hospital, which shall furnish to the City a list of, and specifications for, all such appliances prior to installation. A list of the kitchen appliances provided by Hospital during the first three (3) year term has previously been provided by Hospital.

6. Lodi Memorial Hospital agrees to operate a senior day care program during hours by mutual agreement, Monday through Friday, fifty-two weeks of the year, save and except the usual and traditional holidays.

Such services shall be available to all persons otherwise meeting the criteria for participation in such day care facilities, regardless of race, sex, national origin, or residency.

7. City shall be obligated only to provide the necessary space and maintenance for such day care center. All other expenses of operation of the day care program shall be the responsibility of Lodi Memorial Hospital. Hospital further agrees to operate such Senior Day Care Program on a not-for-profit basis. Charges or fees for such service shall be adjusted with the intent to make such charges or fees reflect the actual cost of operation and overhead of the facility. In determining or calculating profit or loss, Hospital shall be entitled to depreciate during the term of this Lease the cost for any necessary equipment provided during the term by Hospital. Determination of profit or loss may utilize or carry forward/carry back method of calculating profit or loss for each year of the three (3) year term of this Agreement and offset for each year in which a loss was incurred against any year of the current term in which a profit resulted. Additionally, Hospital shall be allowed to carry forward its net operating loss from the prior three (3) year period which as of March 13, 1993 is acknowledged to be \$93,000.00. Should an overall profit result as shown by independent audit based on the considerations found in this paragraph, then at the end of the three (3) year term, it shall be paid and remitted to the Old Lodi Union High School Site Foundation, for the purpose of continued maintenance and development of the Hutchins Street Square facility.

8. City and Hospital hereby mutually agree to hold harmless and indemnify the other in proportion to and to the extent that claims or losses to one are attributable to the negligent acts or omissions of the other. Such hold harmless shall include indemnity for attorneys fees and costs incurred in defending such actions.

Executed this _____ day of _____, 19____, at Lodi, California.

CITY OF LODI, a municipal
corporation

LODI MEMORIAL HOSPITAL

THOMAS A. PETERSON
City Manager

By _____
OLE METTLER, PRESIDENT
Board of Directors

ATTEST:

JACK CARTER, DIRECTOR
Board of Directors

JENNIFER M. PERRIN
City Clerk

Approved As To Form:

JOSEPH HARRINGTON
Administration

BOBBY W. McNatt
City Attorney

AGRLMH1/TXTA.01V

**RISK TRANSFER REQUIREMENTS
FOR LEASE OR USE OF CITY OF LODI FACILITIES**

1. Any individual party or group (hereinafter called Lessee) leasing, renting or otherwise using City of Lodi facilities, is required to carry a policy of Comprehensive General Liability insurance. If hold harmless language is not contained in an agreement between the City and lessee or in an application to use City facilities, then the lessee must complete an "Agreement Assuming Risk of Injury Damage - Waiver and Release of Claims" form. Processing of applications is handled by the department responsible for the facility or equipment.

2. A duplicate or certificate of insurance shall be delivered to the City prior to use of City facilities, as set forth herein.

NOTE: Lessee agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Govt. Code < 810 et seq.).

"Claims made" coverage requiring the insured's to give notice of any potential liability during a time period shorter than that found in the Tort Claims Act shall be unacceptable.

3. Each insurance certificate shall contain satisfactory evidence that each carrier is required to give the City of Lodi immediate notice of the cancellation or reduction in coverage of any policy during the effective period of the use of the City's facilities.
4. Each insurance certificate shall state on its face or as an endorsement, the location of and a description of the function that it is insuring.
5. If the City has not received the certificate of insurance within seventy two (72) hours prior to the commencement of any portion of the function, the City's facilities will not be allowed to be utilized, and any contract or agreement entered into will become null and void.
6. Provided the lease agreement or contract does not prohibit a subtenant, all provisions of these requirements shall apply to and be construed as applying to any subtenant of the Lessee.
7. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

Risk Transfer Requirements, continued

8. In each and every instance, the City of Lodi must be named as an additional insured on the face of the insurance certificate or as an endorsement attached to the certificate of insurance. (THE CITY OF LODI MUST BE NAMED THE ADDITIONAL INSURED, NOT HUTCHINS STREET SQUARE, PARKS AND RECREATION, OR OTHER INDIVIDUAL OR DEPARTMENT.)
9. The address of the City of Lodi must be shown along with No. 8 above, i.e., Additional Insured, City of Lodi, 221 West Pine Street, Lodi, California 95240.
10. In addition to the Additional Named Insured Endorsement on Lessee's policy of insurance, said insurance policy shall be endorsed to include the following language:

"Such insurance as is afforded by the endorsement for the Additional Insured's shall apply as primary insurance. Any other insurance maintained by the City of Lodi or its officers and employees shall be excess only and not contributing with the coinsurance afforded by this endorsement."
11. The combined single limits for bodily injury and property damage shall not be less than \$1,000,000 each occurrence. If alcohol is to be consumed or sold at the Lessee's event, then liquor liability coverage must be provided.

12. The Policy effective date and expiration date must coincide with and span the date(s) of the event being insured.
13. If the limits of coverage are not the amounts specified in Section 10 and 11 above, and/or if the City is not named as an additional insured on the certificate of insurance, and/or if the certificate is a "claims made" certificate, not in conformance with the requirements of Paragraph 2 above, the City will not accept the certificate of insurance, and a corrected certificate of insurance must be furnished to the City prior to any use of any City facility.
14. If a correct insurance certificate and "Agreement Assuming Risk of Injury Damage" is not received by the City of Lodi at least 72 hours prior to the use of the City facilities, the City will not allow the City facilities to be used, and any agreement or contract entered into will become null and void.

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EXHIBIT A

AGREEMENT

THIS AGREEMENT is entered into by and between the CITY OF LODI ("City") and LODI MEMORIAL HOSPITAL ("Hospital").

WITNESSETH:

WHEREAS, the City of Lodi, as the owner of the facilities at Hutchins Street Square and the beneficiary of a gift from the William Holz estate, is desirous of establishing a senior day care center at the Hutchins Street Square facility; and

WHEREAS, it is in the best interests of all parties to contract with an organization having expertise in the area of providing such services for seniors; and

WHEREAS, Lodi Memorial Hospital has such expertise and is desirous of operating such facility;

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

1. The purpose of this agreement is to provide a senior day care facility on a year-round basis at the Hutchins Street Square facility.

2. The City of Lodi agrees to and hereby leases to Lodi Memorial Hospital, the facilities and space described as:

The southern portion of the remodeled Senior Citizens' Complex at Hutchins Street Square, as more particularly shown on the floor plan attached hereto and made a part of this Agreement by reference.

for the sum of one dollar (\$1.00) per year, payable in advance on the anniversary date of this agreement.

3. The initial term of this agreement shall be for three (3) years from the date the building is complete, presently estimated to be March 1, 1990. This lease may be renewed by mutual consent for three (3) year increments by mutual notice given to the other party not later than one hundred and twenty (120) days prior to the expiration of the current term.
4. City shall provide all customary and usual maintenance of buildings and grounds. Lodi Memorial Hospital shall be responsible for all janitorial and cleaning services for the interior of the space described. Hospital shall install or cause to be installed in its own name, separate meters for gas and electric utilities for the space demised hereunder, and shall be responsible for payment of all such utilities, plus a prorata share of water and sewer charges at Hutchins Street Square.

5. Lodi Memorial Hospital shall provide all necessary and customary equipment, furniture, and staff to provide care for a maximum of thirty (30) persons. In addition, Lodi Memorial Hospital shall be responsible for publicity and marketing of the program, expending reasonable and good faith efforts to make the public aware of this program. All kitchen appliances, if any, shall be provided, owned, and maintained by Hospital, which shall furnish to the City a list of, and specifications for, all such appliances prior to installation.
6. Lodi Memorial Hospital agrees to operate a senior day care program during hours by mutual agreement, Monday through Friday, fifty two weeks of the year, save and except the usual and traditional holidays. Such services shall be available to all persons otherwise meeting the criteria for participation in such day care facilities, regardless of race, sex, national origin, or residency.
7. City shall be obligated only to provide the necessary space and maintenance for such day care center. All other expenses of operation of the day care program shall be the responsibility of Lodi Memorial Hospital. Hospital further agrees to operate such Senior Day Care Program on a not-for-profit basis. Charges or fees for such service shall be adjusted with the intent to make such charges or fees reflect the actual cost of operation and overhead of the facility. In determining or calculating profit or loss, Hospital shall be entitled to depreciate during the initial term of this lease, the costs for necessary equipment for the program provided by Hospital. Determination of profit or loss may utilize a carry forward/carry back

method of calculating profit or loss for each year of the current three (3) year term, and offset for each year in which a loss was incurred, against any year of the current term in which a profit resulted. Should an overall profit result as shown by independent audit based on the considerations found in this paragraph, then at the end of the 3-year term, it shall be paid and remitted to the Old Lodi Union High School Site Foundation, for the purpose of continued maintenance and development of the Hutchins Street Square facility.

8. City and Hospital hereby mutually agree to hold harmless and indemnify the other in proportion to and to the extent that claims or losses to one are attributable to the negligent acts or omissions of the other. Such hold harmless shall include indemnity for attorneys fees and costs incurred in defending such actions.

Executed this 21 day of August, 1987 at Lodi, California.

CITY OF LODI, a municipal
corporation

LODI MEMORIAL HOSPITAL

Thomas A. Peterson
THOMAS A. PETERSON
City Manager

By Ole R. Mettler
OLE METTLER, PRESIDENT
Board of Directors

ATTEST:

Jack Carter
JACK CARTER, DIRECTOR
Board of Directors

Alice M. Reimche
ALICE M. REIMCHE
City Clerk

Richard Sandford
RICHARD SANDFORD
Administrator

Approved As To Form:

Bobby W. McNatt
BOBBY W. MCNATT
City Attorney

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AGREEMENT

THIS AGREEMENT, entered into by and between the CITY OF LODI, a municipal corporation ("City"), and LODI MEMORIAL HOSPITAL ("Hospital").

W I T N E S S E T H:

WHEREAS, Lodi Memorial Hospital and the City of Lodi have previously entered into a three (3) year Agreement whereby Hospital leased from City a portion of the Senior Citizens' Complex at Hutchins Street Square. A copy of said Agreement is attached hereto marked Exhibit "A" and by this reference made a part hereof; and

WHEREAS, the purpose of said Lease was for the establishment of a Senior Day Care Center at the Hutchins Street Square facility; and

WHEREAS, the parties hereto are desirous of continuing their relationship for an additional three (3) years;

NOW, THEREFORE, IT IS AGREED by and between the parties hereto as follows:

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Executed this 5th day of January, 1994, at Lodi, California.


CITY OF LODI, a municipal corporation


THOMAS A. PETERSON
City Manager

LODI MEMORIAL HOSPITAL

By _____
OLE METTLER, PRESIDENT
Board of Directors

ATTEST:


JENNIFER M. PERRIN
City Clerk

JACK CARTER, DIRECTOR
Board of Directors

Approved As To Form:


BOBBY W. McNatt
City Attorney

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Administration

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NOTE: Lessee agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Govt. Code < 810 et seq.).

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Risk Transfer Requirements, continued

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Executed this 21 day of August, 1987 at Lodi, California.

CITY OF LODI, a municipal
corporation

LODI MEMORIAL HOSPITAL

Thomas A. Peterson
THOMAS A. PETERSON
City Manager

By Ole R. Mettler
OLE METTLER, PRESIDENT
Board of Directors

ATTEST:

Jack E. Carter
JACK CARTER, DIRECTOR
Board of Directors

Alice M. Reimche
ALICE M. REIMCHE
City Clerk

Richard Sandford
RICHARD SANDFORD
Administrator

Approved As To Form:

Bobby W. McNatt
BOBBY W. McNATT
City Attorney

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